

## Attachment C

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of Regulatory Requirements for	)	CC Docket No. 01-337
Incumbent LEC Broadband	)	
Telecommunications Services	)	

**Declaration of Alan Benway on Behalf of AT&T Corp.**

1. My name is Alan G. Benway. My business address is 900 Route 202/206N, Bedminster, N. J. I am employed by AT&T Corp. ("AT&T") as District Manager in AT&T's Business Services unit. In this position, I am responsible for the planning and development for new product and offers in the areas of Local Frame Relay/Asynchronous Transfer Mode ("ATM") (including DSL access to Frame Relay/ATM) and multipoint Ethernet services. I joined AT&T in 1988 and have held a number of positions in sales, engineering, and operations. I hold a Bachelors of Science in Electrical Engineering and a Masters in Business Administration in Marketing from Rutgers University.

2. The purpose of my testimony is to provide background regarding the provisioning of both local and long distance high-capacity services, including Frame Relay, ATM, and Transparent local area network ("LAN"), and the present conditions that impact the ability to offer these services on a competitive basis.

3. In today's business environment, companies are under pressure to optimize the use of their information technology. As a result, many firms are looking for alternatives to traditional private-line services in order to improve their productivity. Specifically, customers are looking to lower costs (including the cost of connectivity to multiple locations); increase network flexibility and reduce network configuration time; and support new applications and network protocols, all while maintaining extremely high network availability.

4. In general, these needs can be efficiently met by the use of a variety of packet-switched technologies. Traditional circuit-switching architecture establishes a dedicated end-to-end connection between two stations. Because only those two stations may use the connected channels, there is a high likelihood that there will be significant periods of time when no "bits" are transmitted at all and/or there is substantial unused capacity on the facility. In contrast, packet-switched technology breaks down the information stream into smaller but structured segments of information called "packets." Once broken down, the packets are addressed, stored temporarily in buffers, and then transmitted based both on the capacity available on the facility to the next destination point on the network<sup>1</sup> and the priority of the various buffers competing to transmit their content. In this way, packet networks afford more "sharing" opportunities. For example, if the segment on the facility is not fully utilized at a particular instant, the transmitting buffers can transmit at higher rates to fully utilize the segment. Such sharing opportunities in turn result in lower network cost. As an example, Attachment 1 provides a diagram of a typical

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<sup>1</sup> For Frame Relay and ATM services, such connections are pre-defined paths (*e.g.*, permanent virtual circuits, or PVCs) through the network. For Transmission Control Protocol/Internet Protocol services, the connections are established at the time a transmission is attempted. Networks providing the former services are referred to as "connected," while those providing the latter are called "connectionless."

Frame Relay arrangement. Attachment 2 illustrates the difference between the use of dedicated facilities and Frame Relay service.

5. AT&T has built a highly reliable data platform that includes network diversity, a restoration-based network infrastructure, and redundant hardware components throughout. This network allows AT&T to offer both long distance and local data services that use Frame Relay and/or ATM protocols to enable high-speed transmission of voice, data, video, and multimedia applications on to a single network by supporting rapidly changing bandwidth demands. These services can be provided on a local basis, a long distance basis (which AT&T refers to as "domestic"), international or some combination of the three, and they offer the customer end-to-end services with low delay, low bit error rate and high reliability. Further, unlike private lines, these services have the ability to handle "bursty" traffic even at levels above the committed information rate. AT&T also offers Transparent LAN Service that provides high-speed, fully managed LAN-to-LAN connectivity where traffic originates and terminates in a single LATA. This service gives the customer access to high-speed ATM-based networking without requiring new capital investment or training by the customer.

6. However, as is true with both local and long distance voice services, in order to connect its end-user data customers to its data network, AT&T needs local transmission facilities to move traffic from the customer premise to AT&T's point of presence ("POP"). And these transmission facilities must support transmission capacities consistent with the end-to-end service capability that the customer requires.<sup>2</sup> Such premise-to-network connections must almost

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<sup>2</sup> In fact, a significant number of packet-switched service customers require only an intermediate bit speed – something between the standard 56 kbps on a copper loop and the full capacity available on a DS1 or between a DS1 and a DS3. Unfortunately, AT&T is unable to obtain from  
(continued . . . )

always be obtained from the incumbent local exchange carrier ("ILEC"), although in very narrow instances certain buildings can be reached using facilities either AT&T or another carrier has deployed.

7. Attached to AT&T's comments in this proceeding is the declaration of Anthony Fea and William J. Taggart, III, dated April 30, 2001 and submitted with AT&T's Reply Comments to the Commission's Sixth Notice of Proposed Rulemaking in CC Docket No. 96-98. In that declaration, Mr. Fea and Mr. Taggart describe AT&T's use of both its own and ILEC facilities for access to its customers. The declaration also details the processes AT&T employs and the circumstances that drive AT&T's decisions regarding obtaining the necessary access. Although Mr. Fea and Mr. Taggart generally discuss these issues in the context of AT&T's provision of local voice services, their discussion is equally applicable to the data services provided by AT&T.

8. As the Fea/Taggart declaration explains, when AT&T provides data services using ILEC-provided facilities, it almost always must do so using ILEC special access services,

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ILECs the fractional DS1 facilities that would allow it to meet this customer need. One way in which AT&T has addressed this need is to use SDSL/IDSL as an alternative access method. AT&T currently offers xDSL Frame Relay in conjunction with other carriers (*e.g.*, Covad and New Age Networks) and, as they become available, its own xDSL facilities. However, this form of access has some significant disadvantages compared to traditional special access. First, network outages and standard times for service restoration are significantly longer for xDSL loops than they are for traditional access facilities. Second, DSL services, especially through DLECs, are available only on a limited geographic basis. In addition, ILECs generally offer only ADSL, an access designed for consumer applications, and do not offer SDSL/IDSL (Synchronous Digital Subscriber Loop/ISDN Digital Subscriber Loop), which are more likely to be required by business users. Therefore, while some ILECs offer their *retail* Frame Relay/ATM customers service at the desired intermediate bit rate, carriers like AT&T must settle for a less desirable form of access or incur inflated expense of full T1 or T3 circuits to meet customer demands.

which are priced well above their economic cost. The ILECs' control over these essential inputs to AT&T's services, coupled with the current above-cost pricing for the inputs, creates a significant competitive barrier to AT&T's ability to provide both local and long distance high-capacity services. As a result, AT&T has been largely foreclosed from the provision of data services on a local basis, and is being significantly hindered in the long distance data services market as well.

9. The adoption of the Telecommunications Act and its promise of the availability of unbundled network elements ("UNEs") at TELRIC-based prices and AT&T's acquisition of a number of local networks through its purchase of Teleport Communications Group ("TCG") appeared to provide the necessary conditions to enable AT&T to compete successfully. AT&T first began an aggressive attempt to enter the local data market in 1998 by offering Frame Relay, ATM, and Transparent LAN services. AT&T chose to focus its sales and marketing efforts in the 41 LATAs with local AT&T footprints. Once that decision was made, my group coordinated the development of the new product offering. In addition, AT&T modified the systems necessary to support the local data product, conducted the requisite technical trials, and provided its sales force with the appropriate training. Unfortunately, the level playing field that the Act promised has never materialized.

10. One of the major impediments that AT&T has encountered in its efforts to enter the local data market is the ILECs' refusal to provide essential local facilities at economic cost. Although both AT&T's and this Commission's analysis of the Telecommunications Act of 1996 recognized CLECs' ability to purchase high capacity loops and transport facilities as UNEs and

use them to provide any telecommunications service,<sup>3</sup> the current “use restrictions” imposed by the *Supplemental Order Clarification*<sup>4</sup> make it impossible for AT&T practically to take advantage of their availability, even for providing local telecommunications services. Instead, these use restrictions have created the perfect conditions for the ILECs to undertake a classic price squeeze on AT&T and other CLECs.

11. More specifically, based upon the Commission’s 1999 *UNE Remand Order*, AT&T reasonably anticipated that it would be able to use UNEs to provision services that were primarily local. However, after reviewing the three “safe harbor” options adopted in the Commission’s subsequent *Supplemental Order Clarification* that govern when a carrier can use loop-transport UNE combinations, AT&T determined that it would be almost impossible to meet those conditions.<sup>5</sup> The safe harbors proved to be unworkable for many reasons, including system limitations, the significant costs of system modifications that would be necessary to meet the certification process, and network inefficiencies implicit in the prohibition of “co-mingling” of UNE loops or loop-transport combinations with special access traffic.<sup>6</sup> As a result, AT&T has no alternative but to use ILEC special access services to provision the connections between

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<sup>3</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd. 3696, CC Docket No. 96-98 ¶¶ 176-78, 323-324 (1999) (“*UNE Remand Order*”).

<sup>4</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd. 9587, CC Docket No. 96-98 (2000).

<sup>5</sup> The UNEs that AT&T required were almost exclusively local loops of conforming bandwidth and high-capacity interoffice transport, used either individually or as an Enhanced Extended Loop (“EEL”), to connect retail customers to the extensive network investment that AT&T had made in packet switches and the network facilities connecting those packet switches.

<sup>6</sup> See Declaration of Alice Marie Carroll and Cynthia Rhodes, Comments of AT&T Corp., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1991*, CC Docket No. 96-98 (April 5, 2001).

individual customer locations and its advanced service network so that it can provide high-capacity services, even those that are local.

12. Because the use restrictions imposed by the *Supplemental Order Clarification* made loop and transport UNEs unavailable for the provision of its local data services, AT&T was forced to re-analyze the economic feasibility of its offering such services. In the first quarter of 2001 and continuously since, I, with the support of my team, have conducted an ongoing analysis aimed at identifying the root cause of AT&T's inability to gain a foothold in the local data market. As part of that effort, my study team compared AT&T's retail price for local Frame Relay service in 28 markets to the average ILEC tariff rates for comparable service and the average rate for the necessary ILEC access element in those same markets.<sup>7</sup>

13. In 17 out of the 28 markets evaluated, the ILEC access rate exceeded AT&T's retail rate *for the entire service*. In some cases the rates exceed the price point that AT&T considered necessary to provide a competitively priced offering by as much as 150%.<sup>8</sup> These include markets in three of the four RBOC regions.

14. Even more telling was the comparison of the ILEC's special access tariff rates to the ILECs' existing retail rates for Frame Relay service. In significantly more than half of the

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<sup>7</sup> The special access rates used in the analysis reflected AT&T's existing contract terms and discounts.

<sup>8</sup> In determining the price point that AT&T must meet in order to be competitive, AT&T considers both the nature of the target service and customer. In the case of local data services, AT&T is aware that customers are far less likely to switch service providers because of the importance of those services to the customer's operations, the technical complexity of the change, and the fact that many of those services are provided under term contracts that contain onerous termination penalties. As a result of those factors, I determined that AT&T needed to price its local data services at least 10% below the ILECs' retail rates in order to begin to attract customers.



markets studied, the ILEC access tariff rate was higher than the price the ILEC charged for the entire end-to-end service (a combination of access, port, and PVC). Clearly, competition on the merits with the ILEC is impossible under these conditions.

15. A similar analysis done for local ATM services revealed the same disparities. In this case, in more than half of the markets studied, the ILEC wholesale special access rates are higher than AT&T's *retail* access port price. Similarly, in almost two-thirds of the markets examined, the ILECs' access charges paid by AT&T to reach the customer premise were higher than the ILECs' retail local ATM access rates.<sup>9</sup> Again, it is impossible for AT&T to compete when it is forced to pay more for a necessary input for ATM service than the ILEC itself charges for the entire finished service.

16. As a result of this patent price squeeze, AT&T has been forced to take a number of steps which have limited the growth of its local data services and could ultimately lead to AT&T withdrawing those offerings to all but existing customers. Although the local Frame Relay/ATM products are still available, AT&T has substantially limited marketing and related sales efforts of those products.<sup>10</sup> In addition, AT&T has already been forced to raise its prices considerably for its local ATM and Transparent LAN service and, not surprisingly, has seen a significant drop in interest by potential customers. AT&T is also contemplating limiting the availability of its Transparent LAN Service to only those customers that can be reached by

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<sup>9</sup> For purposes of the analysis, AT&T looked *only* at the costs of Frame and ATM services relating to access costs, and not other costs including AT&T's data network and overhead (*e.g.*, provisioning, maintenance, billing, *etc.*)

<sup>10</sup> AT&T continues to offer local Frame Relay/ATM services in conjunction with the provision of domestic (*i.e.*, long distance) Frame Relay/ATM services. Although the provision of these local services by themselves may not be profitable, AT&T offers them in an effort to meet customer needs and add value to its domestic service.

AT&T's own local facilities, or through the use of a third-party Ethernet provider. Moreover, AT&T continues to consider further modifications of its local offerings, depending in large part on whether the Commission continues to allow ILECs to impose use and co-mingling restrictions on facilities that are used to provide special access.

17. In most states, the ILECs still have not opened their local networks to competition and thus, they have not yet received the authority to compete directly with AT&T's long distance data services. This does not mean that the ILECs are not highly influential to the operation of the long distance data market; indeed, they supply the essential connecting facility,<sup>11</sup> they have increased (or are seeking to increase) their customer presence,<sup>12</sup> and they have a major impact upon the pricing of retail services.<sup>13</sup> Thus, if the ILECs are allowed to continue to price necessary inputs to AT&T's data services well above actual costs,<sup>14</sup> the ILECs will be in an ideal

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<sup>11</sup> As noted earlier, and detailed in the Fea/Taggart declaration, new locations cannot be served and new services cannot be offered unless access facilities of sufficient technical parameters exist. Further, AT&T has attempted to migrate long distance data customers from ILEC special access facilities to its local network where it is feasible to do so. However, even where AT&T has local facilities in place, due to AT&T's existing term and volume commitments with ILECs and the significant termination penalties associated with those commitments, this migration must be done incrementally.

<sup>12</sup> For example, AT&T has observed that its customers are choosing to purchase baseline ILEC service for access at higher speeds, *e.g.*, DS3 and OCX facilities.

<sup>13</sup> As noted before, often the retail price of AT&T's local packet services does not even cover the cost of access to the customer, let alone other costs. However, even in the provision of AT&T's domestic Frame Relay/ATM services, the access input, which is only a small part of the total service, comprises, a substantial percentage of the cost of providing those services. Therefore, although ILECs do not acknowledge an interLATA presence, they have what amounts to a significant (but hidden) market share.

<sup>14</sup> In comments filed with this Commission on April 5, 2001 in response to the Commission's Sixth Notice of Proposed Rulemaking in CC Docket No. 96-98, both Bell South and Qwest admit that their access charges are actually twice the economic costs of providing these services. Comments of BellSouth, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, at 3 (April 5, 2001); Comments of  
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position to use the same price squeeze strategy they have employed in the local market to stymie competition for interLATA data services once the ILECs receive Section 271 approval.

18. Indeed, there is evidence that the ILECs will take that exact course. In the MSAs where ILECs have obtained full pricing flexibility, AT&T has seen the ILECs raise rates for access services it needs to provide local data services.<sup>15</sup> And, at the same time, the ILECs in many jurisdictions have been able to obtain deregulation of their retail prices for local services, in particular business-type services. By taking advantage of the interstate upward pricing flexibility to increase the rate for wholesale access facilities and the ability to decrease local retail rates, ILECs have been able to interfere with the growth of competition. ILECs will be able to accomplish the same results in long distance data services because, as noted, their monopoly access services account for a substantial cost of the entire service. On the other hand, because of the fully competitive nature of the long distance market, ILECs will be able to purchase necessary inputs for the provision of long distance service at cost-based rates.

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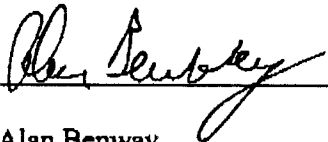
*Qwest Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, at 7 (April 5, 2001).

<sup>15</sup> See Comments of AT&T Corp., *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange and Interexchange Carriers*, CC Docket No. 00-256, at 19-22 (February 14, 2002).

**VERIFICATION**

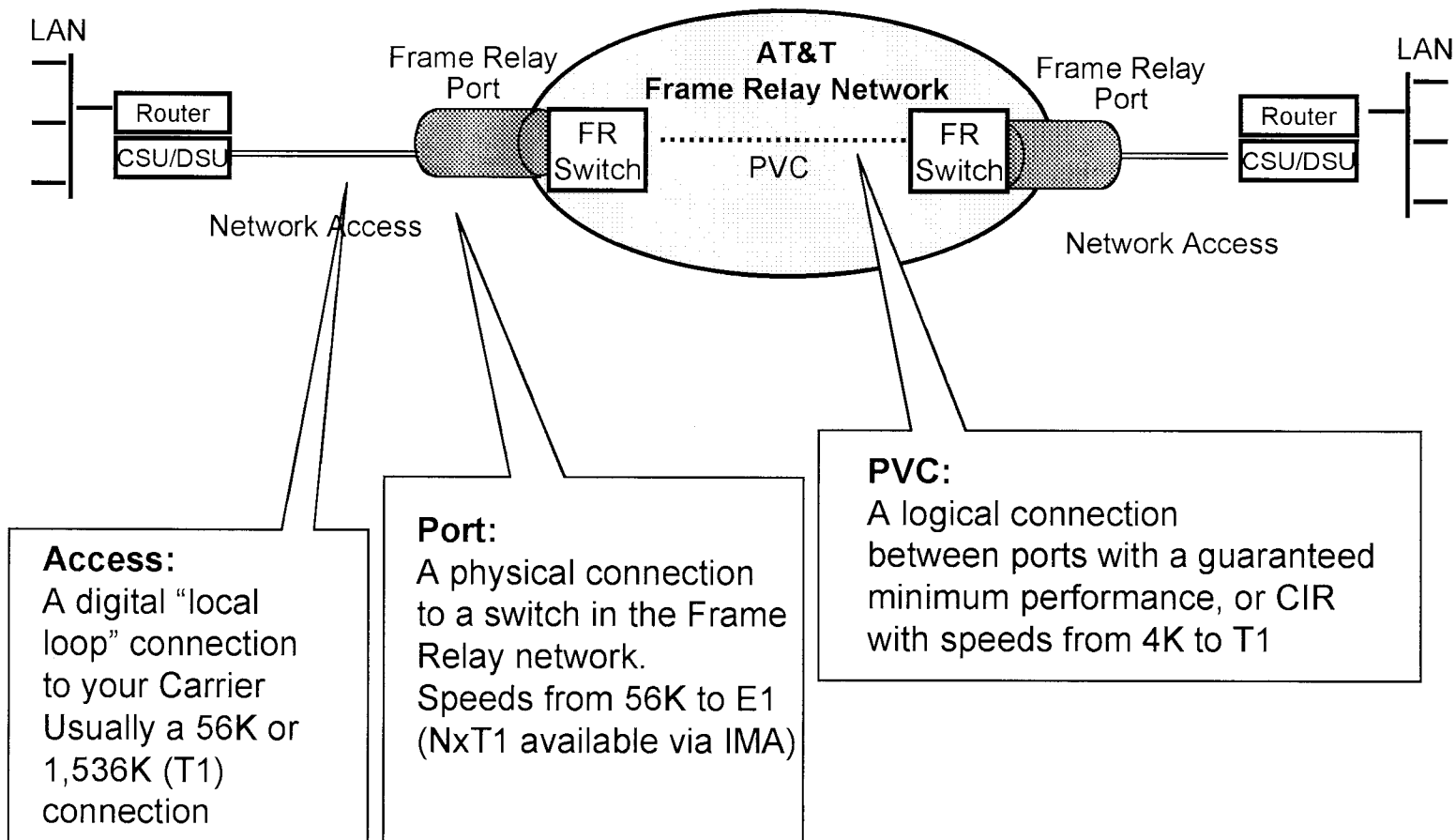
I, Alan Benway, declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2002.

  
Alan Benway

## Exhibit 1

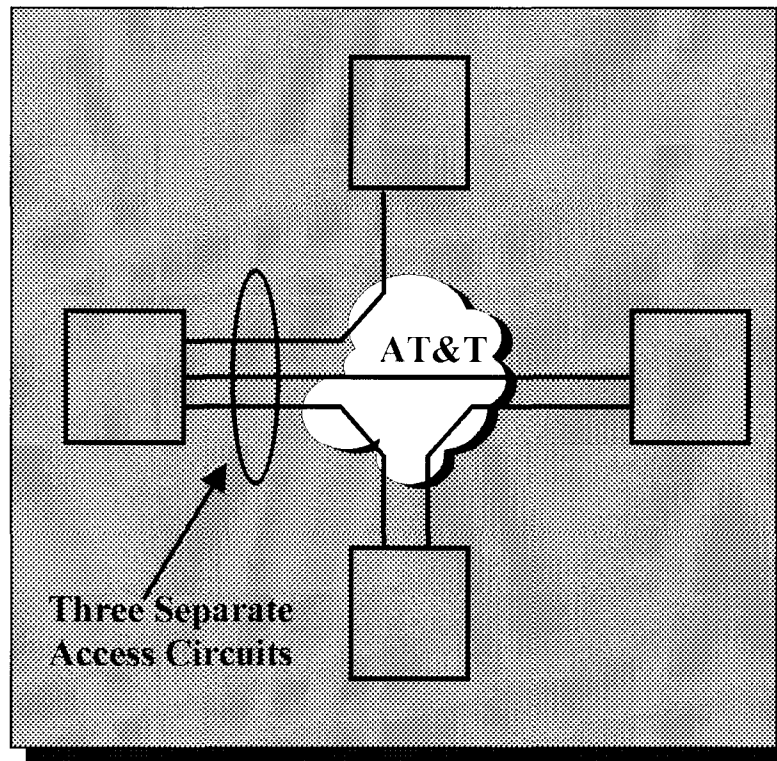
# Anatomy of a Frame Relay Connection



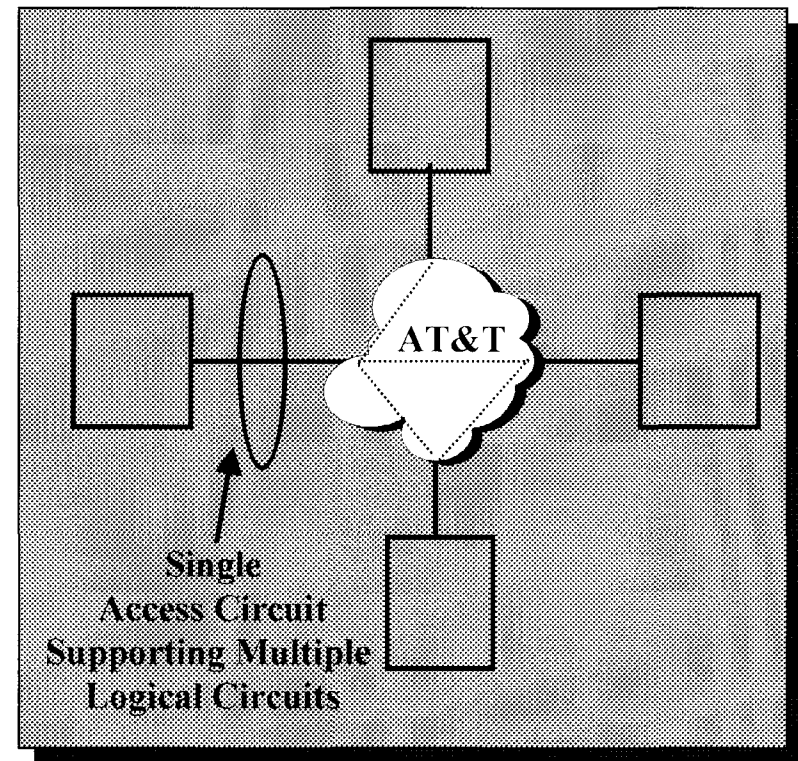
## Exhibit 2

# Access & Router Port Efficiencies

*Leased Line*



*Frame Relay*



Physical Circuits

Logical Circuits